

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MULTICARE HEALTH SYSTEM,

Plaintiff,

v.

WASHINGTON STATE NURSES  
ASSOCIATION,

Defendant.

Case No.

COMPLAINT TO VACATE  
ARBITRATION AWARD

**I. PARTIES**

1. MultiCare Health System (MultiCare) is a Washington not-for-profit healthcare organization, with its principal place of business in Tacoma, Washington. MultiCare operates medical facilities throughout the state of Washington, including Tacoma General Hospital (TGH) in Tacoma, Washington. MultiCare is involved in an industry affecting interstate commerce.

2. The Washington State Nurses Association (WSNA) is a labor union that represents registered nurses (RNs) employed by MultiCare, including RNs employed at TGH. WSNA was also a party to the arbitration that is the subject of this Complaint.

3. MultiCare and WSNA were parties to a Collective Bargaining Agreement (CBA) effective June 2013 through December 2015. A true and correct copy of the relevant portions of

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1 the CBA is attached to this Complaint as **Exhibit A**. MultiCare and WSNA are currently  
2 engaged in negotiations regarding a successor CBA.

3 4. MultiCare and WSNA are also parties to a Settlement Agreement entered into  
4 September 12, 2013 (the Settlement Agreement). A true and correct copy of the Settlement  
5 Agreement is attached to this Complaint as **Exhibit B**.  
6

## 7 **II. JURISDICTION**

8 5. MultiCare files this complaint to vacate an arbitration award arising under the  
9 CBA and the Settlement Agreement. This Court has jurisdiction to review and vacate the  
10 arbitration award pursuant to § 301(a) of the Labor Management Relations Act (LMRA), 29  
11 U.S.C. § 185(a), and the Federal Arbitration Act (FAA), 9 U.S.C. § 10.  
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## 13 **III. VENUE**

14 6. Venue is proper in the Court pursuant to Section 301(a) of the Act, 29 U.S.C. §  
15 185(a), in that this Court has jurisdiction over the parties. Venue is also appropriate pursuant to  
16 28 U.S.C. § 1391(b) in that the events giving rise to this Complaint occurred in this District.  
17

## 18 **IV. FACTUAL BACKGROUND**

19 7. Pursuant to the parties' CBA, RNs at TGH are entitled to a 15-minute rest break  
20 for every four hours worked. When an RN misses his or her 15-minute rest break, he or she is  
21 required to record the missed break in TGH's Kronos timekeeping system and the RN is  
22 compensated for that missed break in an amount representing 15 extra minutes of pay (at time  
23 and a half if the RN works overtime).

24 8. TGH is composed of approximately 30 different units or departments, each of  
25 which has established its own practices, policies, and procedures to ensure that RNs receive their  
26

1 15-minute rest breaks. Approximately half of TGH's units utilize what is known as "the break  
2 buddy system" as a method for providing RNs with their breaks. Pursuant to the break buddy  
3 system, RNs work in pairs or as teams to relieve each other for their rest breaks.

4 9. In October 2010, WSNA filed a lawsuit against MultiCare, asserting that RNs at  
5 TGH were not being paid correctly for missed rest breaks. MultiCare compensated RNs for  
6 missed rest breaks at straight time, a practice that the Department of Labor and Industries (L&I)  
7 had previously represented to MultiCare as the correct method for computing payment for  
8 missed breaks. The Washington Court of Appeals had also issued a decision with a holding  
9 consistent with L&I's and MultiCare's position. However, in late 2012, the Washington  
10 Supreme Court reversed that Court of Appeals decision and held that RNs must be compensated  
11 at an overtime rate of time and a half for missed rest breaks under certain circumstances. That  
12 decision became final in 2013, and the change in the law served as the impetus for MultiCare to  
13 engage in settlement discussions with WSNA. WSNA and MultiCare engaged in direct  
14 negotiations, exchanging proposals that ultimately led to the Settlement Agreement.  
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16

17 10. The following provision of the parties' Settlement Agreement is at issue in this  
18 dispute:  
19

- 20 1. MultiCare's Obligations. MultiCare agrees to both  
21 retroactive and prospective relief for the benefit of the  
Represented Nurses.
  - 22 a. Missed Breaks Process to be put into effect by or  
23 before the completion of MultiCare's scheduled  
24 system wide introduction of the Kronos time-  
keeping system, currently scheduled to begin in  
25 2014:  
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(1) Managers of each department or unit of Tacoma General Hospital and Good Samaritan Hospital will adopt mechanisms, practices or policies that assure each Represented Nurse is relieved of patient care duties for a 15-minute rest period every four hours of work. In no case shall the mechanism used result in a violation of the staffing plan established by the Nurse Staffing committee. Represented Nurses will work cooperatively to implement whatever mechanisms are used in each department or unit. Except in exigent circumstances, RNs will accept a rest break when relief is provided and, in the RN's judgment, patient needs will be met and is consistent with the Nurse Practice Act.

Exhibit B, § 1.

11. The Settlement Agreement further provides:

The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. Any disputes arising out of this Agreement shall be submitted to the grievance process in the applicable collective bargaining agreement, culminating in final and binding arbitration, if necessary.

Exhibit B, § 3(e).

12. The parties' CBA provides:

Arbitration.

If the grievance is not settled on the basis of the foregoing procedures, and if the grievant and the Association have complied with the specific time limitations specified in Steps 1, 2, 3 and 4 herein, the Association may submit the issue in writing to arbitration within fourteen (14) calendar days following the receipt of the written reply from the Director of Labor Relations or designee. If the Hospital and the Association fail to agree on an arbitrator, a list of eleven (11) arbitrators shall be requested from the Federal Mediation and Conciliation Service. The parties shall thereupon alternate in striking a name from the panel until one name remains. The person whose name remains shall be the arbitrator. Prior to proceeding to arbitration, the Association will fully identify and describe the issue to be submitted to the Arbitrator. The arbitrator's decision shall be final and binding on all parties. The arbitrator shall have no authority to add to, subtract from, or otherwise change or modify the provisions of this

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Agreement, but shall be authorized only to interpret existing provisions of this Agreement as they may apply to the specific facts of the issue in dispute. The Arbitrator shall have no authority to award punitive damages. Any dismissal of a grievance by the Arbitrator, whether on the merits or on procedural grounds, shall bar any further litigation of the issue in dispute. Each party shall bear one-half (1/2) of the fee of the arbitrator for an Award issued on a timely basis and any other expense jointly incurred incident to the arbitration hearing. All other expenses, including but not limited to legal fees, deposition costs, witness fees, and any and every other cost related to the presentation of a party's case, shall be borne by the party incurring them, and neither party shall be responsible for the expenses of witnesses called by the other party.

Exhibit A, Art. 14.3.

13. On April 11, 2014, WSNA filed the grievance underlying this dispute, asserting that TGH violated Section 1(a) of the Settlement Agreement. WSNA's Grievance was premature, as MultiCare's obligations under Section 1(a) of the Settlement Agreement did not take effect until the implementation of its Kronos timekeeping system at TGH on August 24, 2014. Nevertheless, representatives of TGH met with representatives of WSNA for "Step Two" and "Step Three" meetings, pursuant to the grievance process outlined in the parties' CBA (Exhibit A, Art. 14.3).

14. When the Parties were unable to resolve WSNA's grievance, WSNA requested arbitration under Article 14.3 of the CBA.

15. The Arbitrator held a hearing, in phases, on August 17-18, 2015, September 24-25, 2015, and October 19, 2015. A true and correct copy of the hearing transcript is attached to this Complaint as **Exhibit C**. True and correct copies of the hearing exhibits are attached to this Complaint as **Exhibit D**.

16. The Parties submitted their post-hearing briefs to the Arbitrator on December 2, 2015. True and correct copies of the Parties' briefs are attached to this Complaint as **Exhibit E**.

1           17.     On December 28, 2015, the Arbitrator issued an Opinion and Award (the  
2 Award). A true and correct copy of the Award is attached to this Complaint as **Exhibit F**.  
3 Counsel for MultiCare received that Award on December 31, 2015.

4           18.     The Arbitrator defined the issue as the following: “Did the employer violate the  
5 settlement agreement by failing to adopt and provide mechanisms, practices or policies  
6 procedures that would give the opportunity and means for the represented nurses to take their  
7 rest breaks as provided for in the agreement? If so, what is the appropriate remedy?” Exhibit F,  
8 p. 2.

9  
10           19.     The Arbitrator correctly noted that the Settlement Agreement was the result of  
11 “vigorous, thorough and extensive negotiations,” (Exhibit F, p. 6), and made several explicit  
12 findings about specific aspects of those negotiations. The Arbitrator expressly found, with  
13 respect to the Parties’ negotiations regarding use of the buddy system as a means to provide RNs  
14 with their breaks:

15  
16                   MultiCare did not abandon its position that the buddy system is a  
17 viable and workable solution to the break problem, and therefore  
18 one of the potential mechanisms available. Nor did the WSNA  
19 accede to the explicit inclusion of this system as a means to resolve  
their continuing concerns regarding rest breaks. It remained,  
unspecified, as one of the possible choices a department or unit  
could choose to adopt and utilize in providing the requisite rest  
breaks.

20 Exhibit F, p. 7 (emphasis added).

21           20.     The Arbitrator acknowledged that the break buddy system was not barred by the  
22 Settlement Agreement, concluding that “the inclusion of ‘mechanisms practices or policies’ [in  
23 the Settlement Agreement] was the concession that would allow for the employer to maintain  
24 and continue the application of this [break buddy] system.” Exhibit F, p. 28.

1           21.     Despite the Arbitrator's express findings that the Settlement Agreement did not  
2     bar the break buddy system, the Arbitrator nonetheless directed that TGH cease using the break  
3     buddy system no later than the pay period nearest to January 15, 2016.

4           22.     The Arbitrator also made an express finding of the negotiating history regarding  
5     the possibility of staffing changes as a result of the settlement agreement:

6                     Further, the parties, in attempting to reach the settlement,  
7                     exchanged a number of proposals regarding staffing. WSNA  
8                     sought language that would generate staffing increases if certain  
9                     criteria were met. MultiCare, according to testimony, was adamant  
10                    that they would not agree to anything that would mandate  
11                    increased staffing. The WSNA was successful in including a  
12                    protection against filing of the terms of the staff and committees  
13                    staffing plan brackets (*sic*).

14     Exhibit F, p. 7 (emphasis added). None of WSNA's proposals that would have mandated  
15     staffing increases were included in the Settlement Agreement.

16           23.     Despite the Arbitrator's express findings that the Settlement Agreement was  
17     negotiated to not require staffing increases, the Arbitrator nonetheless directed that in  
18     determining future schedules, each unit shall assign a "reserve or float nurse" with the specific  
19     assignment of providing relief for rest breaks. MultiCare will not be able to comply with this  
20     mandate without hiring additional staff to fulfill those roles. Again, the Arbitrator directed that  
21     such schedules be effective no later than the pay period nearest to January 15, 2016.

22           24.     The Arbitrator further directed that TGH's staffing committee meet to discuss a  
23     mutually acceptable process to resolve the issues addressed in this award. He further mandated  
24     that in the event the Parties are unable to reach an acceptable solution by June 30, 2016, the  
25     Parties must submit their "last, best position" to the Arbitrator and that the Arbitrator would  
26     select one position without modification. The Arbitrator purported to retain jurisdiction to  
27     resolve any dispute arising under the Award.



1           25.     The Arbitrator's decision fails to draw its essence from the CBA and the  
2 Settlement Agreement, by ignoring or contradicting the plain language and intent of the Parties'  
3 agreements in a variety of respects, as follows:

4           a.     The Arbitrator's Award prohibits a break mechanism -- the break buddy  
5 system -- that, according to the Arbitrator's own findings, was specifically allowed by the  
6 Settlement Agreement.

7           b.     The Arbitrator's Award mandates staffing increases, when, according to  
8 the Arbitrator's own findings, the Settlement Agreement was specifically negotiated by  
9 the Parties to not require staffing increases.

10           c.    The Arbitrator's Award violates the CBA by requiring new schedules in a  
11 timeframe inconsistent with the CBA's provisions. Specifically, the Arbitrator required  
12 new schedules assigning break relief nurses to be prepared no later than the pay period  
13 nearest to January 15, 2016. That pay period began on January 10, 2016. Under the  
14 CBA, MultiCare must provide notice of any schedule change "prior to the 10th day  
15 preceding the day on which the schedule becomes effective." (Exhibit A, Art. 8.6). Such  
16 notice was not possible, given that MultiCare did not even receive the Award until  
17 December 31, 2015, the last business day before the New Year's holiday.

18           d.    The Arbitrator unilaterally attempted to bestow upon himself continued  
19 jurisdiction over this case without the Parties' consent and contrary to the Parties'  
20 agreements. Pursuant to the CBA, the Settlement Agreement, and generally accepted  
21 principles of labor law, the Arbitrator may only resolve the grievance before him, and the  
22 Arbitrator's decision is "final." The Arbitrator is only authorized "to interpret existing  
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1 provisions of this agreement as it may apply to the specific facts of the issue in dispute.”

2 Exhibit A, Art. 14.3. Such limitations preclude the Arbitrator from reserving to himself  
3 the jurisdiction to resolve issues yet to be arrived at, much less facts that are yet  
4 unknown.

5  
6 26. The Arbitrator’s Award is also contrary to public policy, as it is contrary to State  
7 law. RCW 70.41.410 *et seq.* requires that TGH’s staffing plan be subject to the ultimate  
8 approval of TGH’s Chief Executive Officer. The Award would purport to bypass that approval,  
9 instead making the staffing committee’s plan subject to the Arbitrator’s approval.

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11 **V. GROUNDS FOR RELIEF**  
12 **COUNT ONE**

13 27. MultiCare incorporates by reference paragraphs 1 through 26, above, as if fully  
14 set forth herein.

15 28. The Arbitrator exceeded the authority granted him by the CBA and the Settlement  
16 Agreement and failed to draw his award from the essence of the Parties’ agreements by in at  
17 least two instances ignoring or contradicting the plain language and acknowledged intent of the  
18 Settlement Agreement.

19 29. The Arbitrator exceeded the authority granted him by the CBA and the Settlement  
20 Agreement and failed to draw his award from the essence of the Parties’ agreements by  
21 prescribing a remedy that violated the plain terms of the CBA.

22 30. The Arbitrator exceeded the authority granted him by the CBA and the Settlement  
23 Agreement and failed to draw his award from the essence of the Parties’ agreements by  
24 abrogating to himself jurisdiction to hear a dispute that has not yet arisen.  
25  
26

1 31. The Arbitrator's Award is contrary to public policy insofar as it violates RCW  
2 70.41.410 *et seq.*

3 32. The Award should be vacated in its entirety.  
4

5 **VI. PRAYER FOR RELIEF**

6 WHEREFORE, MultiCare prays for relief as follows:

- 7 1. An order vacating the Arbitrator's Award, discussed above; and  
8 2. For such other relief as the Court may deem just and proper.

9 DATED: January 21, 2016

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